

ORIGINAL

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Patrick O'Connell, Clerk-Recorder



No Fee

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RECORDED ON BEHALF OF AND
WHEN RECORDED RETURN TO:

Department of Toxic Substance Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attention: Barbara J. Cook, P.E., Chief
Site Mitigation Branch

COVENANT OF DEED RESTRICTION
(Agreement)

This Covenant of Deed Restriction ("Covenant"), dated as of the 1st day of February 1996, is by and between the CITY OF OAKLAND, a municipal corporation, (the "City") acting by and through its Board of Port Commissioners ("Covenantor") and the State of California, Environmental Protection Agency, Department of Toxic Substances Control (the "Department"). The City is the owner of record and the Covenantor has control and jurisdiction of certain real property situated in the Port Area of the City of Oakland, County of Alameda, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"). Covenantor and the Department desire and intend that in order to protect the present and future public health and safety and the environment, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from hazardous substances and wastes which have been deposited on the Property.

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ARTICLE ISTATEMENT OF FACTS

1.01 Description of Contamination. The Property was formerly the site of a coal gasification plant owned and operated by Pacific Gas & Electric Company and/or its predecessors. The hazardous substance contamination is primarily polynuclear aromatic hydrocarbon-contaminated soil and groundwater with minor amounts of volatile organic compounds in the soil and groundwater. The entire Property has been covered with a vapor barrier and a concrete Cap to contain the hazardous substances and prevent migration.

1.02 Health Effects. The corrective actions taken at the Property has significantly reduced the potential for off-site migration of the hazardous substance contamination. The Cap and vapor barrier prevents surface water from infiltrating into soils containing the contaminants.

Potential exposure via direct exposure to contaminated surface soils has been eliminated by capping the contaminated areas. In the event that exposure is not minimized or eliminated, potential health effects are as follows:

Polynuclear aromatic hydrocarbon compounds (PNAs). PNAs may pose an inhalation and/or skin absorption hazard. These compounds include specific species that are classified as possible human carcinogens. Long-term dermal exposure to PNAs can increase the risk of skin cancer. Long-term ingestion of PNAs can increase the risk of stomach cancer. Long-term inhalation exposure to airborne PNAs can increase the risk of respiratory cancer. However, PNAs have relatively low vapor pressures, which reduces risk of inhalation.

1 Volatile organic compounds (VOCs). VOCs include benzene,
2 toluene, ethylbenzene, and xylenes (BTEX). BTEX compounds are
3 readily absorbed through the skin, and exposure can also occur
4 through ingestion of contaminated soil or groundwater. Short-
5 term inhalation/absorption of BTEX can cause fatigue,
6 drowsiness, vomiting and headaches. Long-term exposure to
7 BTEX is known to increase the risk of cancer, liver failure,
8 and leukemia.

9 1.03 Surrounding Land Use. The Property is located in an
10 area used for industrial and commercial (including retail)
11 purposes. The area within a one-mile radius of the Property is
12 primarily industrial and commercial. The Property is bordered by
13 properties for commercial use.

14 ARTICLE II

15 GENERAL PROVISIONS

16 2.01 Provisions to Run with the Land. This Covenant sets
17 forth protective provisions, covenants, restrictions, and
18 conditions (collectively referred to as "Restrictions"), upon and
19 subject to which the Property and every portion thereof shall be
20 improved, held, used, occupied, leased, sold, hypothecated,
21 encumbered, and/or conveyed. Each and all of the Restrictions
22 shall run with the land and pass with each and every portion of
23 the Property, and shall apply to, inure to the benefit of, and bind
24 the respective successors in interest thereof unless terminated
25 pursuant to Article V hereof. Each and all of the Restrictions are
26 imposed upon the entire Property unless expressly stated as
27 applicable to a specific portion of the Property. Each and all of
28 the Restrictions are imposed pursuant to California Health and

1 Safety Code Sections 25355.5 and 25356.1 .

2 2.02 Concurrence of Owners Presumed. All purchasers,
3 lessees, or possessors of any portion of the Property shall be
4 deemed by their purchase, lease, or possession of such Property, to
5 be in accord with the foregoing and to agree for and among
6 themselves, their heirs, successors, and assignees, and the agents,
7 employees, and lessees of such owners, heirs, successors, and
8 assignees, that the Restrictions as herein established must be
9 adhered to for the benefit of future Owners (as hereinafter
10 defined) and Occupants (as hereinafter defined) and that their
11 interest in the Property shall be subject to the Restrictions
12 contained herein.

13 2.03 Incorporation into Deeds and Leases. Covenantor desires
14 and covenants that the Restrictions set out herein shall be
15 incorporated by reference in each and all deeds in which it is the
16 grantor and leases in which it is the lessor of any portion of the
17 Property.

18 ARTICLE III

19 DEFINITIONS

20 3.01 Department. "Department" shall mean the State of
21 California, Environmental Protection Agency, Department of Toxic
22 Substances Control and shall include its successor agencies, if
23 any.

24 3.02 Improvements. "Improvements" shall mean all buildings,
25 roads, driveways, regrading, and paved parking areas, constructed
26 or placed upon any portion of the Property.

27 3.03 Occupant(s). "Occupant(s)" shall mean those persons
28 entitled by ownership, leasehold, or other legal relationship to

1 the exclusive right to occupy any portion of the Property.

2 3.04 Owner(s). "Owner(s)" shall mean the Covenantor or
3 successors in interest, including heirs and assigns, who hold title
4 to all or any portion of the Property.

5 3.05 Director. "Director" shall mean the Director of the
6 Department or his or her designee.

7 3.06 Cap. "Cap" shall mean the protective cover used to
8 isolate hazardous substance contaminated soils on the Property from
9 human or environmental exposure. The Cap is a concrete foundation
10 with a vapor barrier underlying it.

11 ARTICLE IV

12 DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

13 4.01 Restrictions on Development and Use. Covenantor
14 promises to restrict the use of the Property as follows:

- 15 a. Property shall be restricted to commercial
16 (including retail) or industrial use.
- 17 b. Residential development for human habitation shall
18 not be permitted on the Property.
- 19 c. Hospitals or health clinics shall not be permitted
20 on the Property.
- 21 d. Day-care centers for either children or senior
22 citizens shall not be permitted on the Property.
- 23 e. Schools for children under 18 years of age shall
24 not be permitted on the Property.
- 25 f. No drilling for drinking water shall be permitted
26 on the Property.
- 27 g. No raising of food (cattle, food crops, cotton and
28 etc.) shall be permitted on the Property.

- 1 h. Subdivision of the Property is forbidden, except as
2 allowed under California Health and Safety Code
3 Section 25232 (a)(2) and (b)(2).
- 4 i. Except for operation and maintenance activities
5 described in the Operation and Maintenance Plan
6 which is attached as Exhibit "C" to that certain
7 Operation and Maintenance Agreement between the
8 Covenantor and the Department dated February 1,
9 1996, no activities which will disturb the capped
10 soils or groundwater shall be permitted on the
11 Property without a Soil Management Plan and Health
12 and Safety Plan submitted to the Department for
13 review and approval.
- 14 j. Any contaminated soils brought to the surface of
15 the Property by grading, excavation, trenching or
16 backfilling pursuant to a Department approved Soil
17 Management Plan and Health and Safety Plan shall be
18 managed in accordance with all applicable
19 provisions of state and federal law.
- 20 k. Unless otherwise agreed to in writing by the
21 Covenantor and the Department for purposes of
22 development of the Property for other than a movie
23 theatre, all uses and development of the Property
24 shall, to the maximum extent feasible, preserve the
25 integrity of the Cap and vapor barrier, groundwater
26 monitoring and any other remediation system
27 installed.
- 28 l. The Owner(s)/Occupant(s) shall provide notification

1 to any subsequent purchasers, lessees and tenants
2 stating that there is residual contamination as
3 specified in California Health and Safety Code
4 Section 25359.7(a).

5 m. Any proposed significant alteration of the Cap
6 shall require written approval by the Department.

7 4.02 Conveyance of Property. The Owner(s) shall provide
8 thirty (30) days notice to the Department of any sale, lease, or
9 other conveyance by the Owner of the Property or an interest in the
10 Property to a third person. The Department acknowledges receipt of
11 the Covenantor's August 2, 1994, letter to the Department giving
12 notice of Covenantor's proposed lease of the Property for
13 construction and operation of a movie theater. The Department
14 further acknowledges that the Property has been leased by the
15 Covenantor for construction and operation of a movie theater
16 thereon. The Department shall not, by reason of the Covenant, have
17 authority to approve, disapprove, or otherwise affect any sale,
18 lease, or other conveyance of the Property except as otherwise
19 provided by law, by administrative order, or by reason of this
20 Covenant.

21 4.03 Enforcement. Failure of any Owner/Occupant to comply
22 with any of the Restrictions set forth in section 4.01 hereof,
23 shall be grounds for the Department, by reason of the Covenant, to
24 require that the Owner/Occupant modify or remove any Improvements
25 constructed in violation of that Section 4.01. Violation of the
26 Covenant shall be grounds for the Department to file civil and
27 criminal actions against the Owner/Occupant as provided by law.

28 4.04 Notice in Agreements. In the event any conveyance by

1 the Owner, the Owner shall execute written lease, sublease, or
2 rental agreements relating to the Property. Any such instrument
3 shall contain the following statement:

4 "The land described herein contains hazardous substances.
5 Such condition renders the land and the owner, lessee, or
6 other possessor of the land subject to requirements,
7 restrictions, provisions, and liabilities contained in
8 Chapter 6.5 and Chapter 6.8 of Division 20 of the Health
and Safety Code as well as by a specific Covenant of Deed
Restriction, a copy of which is attached hereto and
incorporated herein by reference. This statement is not
a declaration that a hazard exists."

9 4.05 Approval of Movie Theater Use on Property. The
10 Department approves use of the Property for the construction and
11 operation of a movie theater.

12 ARTICLE V

13 VARIANCE AND TERMINATION

14 5.01 Variance. Any Owner(s) or, with the Owner's(s') written
15 consent, any Occupant of the Property or any portion thereof may
16 apply to the Department for a written variance from the provisions
17 of this Covenant. Such application shall be made in accordance
18 with California Health and Safety Code Section 25233.

19 5.02 Termination. Any Owner(s) or, with the Owner's(s')
20 written consent, any Occupant of the Property or a portion thereof
21 may apply to the Department for a termination of the Restrictions
22 as they apply to all or any portion of the Property. Such
23 application shall be made in accordance with California Health and
24 Safety Code Section 25234.

25 5.03 Term. Unless terminated in accordance with Section 5.02
26 above, by law or otherwise, this Covenant shall continue in effect
27 in perpetuity.

28 ARTICLE VI

MISCELLANEOUS

6.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

6.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid, certified return receipt requested:

To: Port of Oakland
Attention: Rick Ferrin
530 Water Street
Oakland, California 94607

To: Department of Toxic Substances Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, P.E., Chief
Site Mitigation Branch

6.03 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

6.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not part of the Covenant.

6.05 Recordation. This instrument shall be executed by the

1 | Covenantor and by the Department's Site Mitigation Branch Chief.
2 | This instrument shall be recorded by the Covenantor in the County
3 | of Alameda within five (5) days of the Covenantor's receipt of
4 | fully executed copies of this Covenant.

5 | 6.06 References. All references to Code sections include
6 | successor provisions.

7 | 6.07 Effective Date. This Covenant shall become effective
8 | upon execution by all parties hereto including the parties' legal
9 | representatives.

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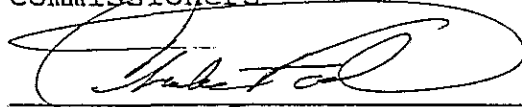
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1 IN WITNESS WHEREOF, the parties execute this Covenant as of
2 the date set forth above.

3 COVENANTOR:

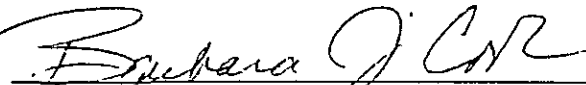
4 CITY OF OAKLAND, a municipal
5 corporation, acting by and
6 through its Board of Port
Commissioners

7 

8 By: Charles W. Foster
Executive Director

Date: 10/1/96

9 STATE OF CALIFORNIA
10 ENVIRONMENTAL PROTECTION AGENCY
11 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

12 

13 By: Barbara J. Cook, P.E., Chief
14 Site Mitigation Branch
Department of Toxic Substances Control

Date: 10/1/96

15 THIS AGREEMENT ALL NOT BE
16 VALID OR EFFECTIVE FOR ANY
17 PURPOSE UNLESS AND UNTIL
IT IS SIGNED BY THE PARTIES'
LEGAL COUNSEL.

18 Approved as to form and
19 legality this 3rd day
of October, 1996.

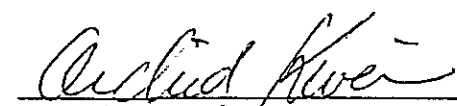
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21 David L. Alexander
22 Port Attorney

Port Resolution No.: 94342

P.A.# 96-300

23 STATE OF CALIFORNIA
24 ENVIRONMENTAL PROTECTION AGENCY
25 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

26 

27 Orchid Kwei
28 Senior Counsel
Department of Toxic
Substances Control

Date: 9/18/96

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

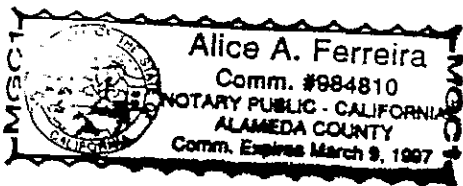
State of CALIFORNIA

County of ALAMEDA

On October 1, 1996 before me, ALICE A. FERREIRA, A NOTARY Public,
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared BARBARA J. COOK
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Alice A. Ferreira
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☒ CORPORATE OFFICER
Chief
TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED
☐ ATTORNEY-IN-FACT ☐ GENERAL
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

COVENANT OF DEED
TITLE OR TYPE OF DOCUMENT
RESTRICTION
11
NUMBER OF PAGES
2/1/96
DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

ENVIRONMENTAL Protection
Agency

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of CALIFORNIACounty of ALAMEDAOn 10/1/96 before me, ALICE A. FERREIRA, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., JANE DOE, NOTARYpersonally appeared CHARLES W. FOSTER
NAME(S) OF SIGNER(S)

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Alice A. Ferreira
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☒ CORPORATE OFFICER

EXECUTIVE DIRECTOR
TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
 NAME OF PERSON(S) OR ENTITY(IES)

PORT OF OAKLAND

DESCRIPTION OF ATTACHED DOCUMENT

COVENANT OF DEED OF RESTRICTION

 TITLE OR TYPE OF DOCUMENT

11
 NUMBER OF PAGES

2/1/96
 DATE OF DOCUMENT

Barbara J. Cook
 SIGNER(S) OTHER THAN NAMED ABOVE

The Property

ALL THAT REAL PROPERTY SITUATED IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL B-2 AS DESCRIBED IN THE GRANT DEED FROM PACIFIC GAS AND ELECTRIC COMPANY TO THE CITY OF OAKLAND, RECORDED OCTOBER 22, 1963 ON REEL:1024; IMAGE 494, SERIES AU174088, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS.

LOTS 1 TO 12 INCLUSIVE, AND LOTS 25 TO 28 INCLUSIVE, AND PORTIONS OF LOTS 13 AND 24, ALL IN BLOCK 6, AS SAID LOTS AND BLOCK ARE SHOWN ON "KELLERSBERGER'S MAP OF OAKLAND" WHICH IS FILED IN BOOK 7 OF MAPS AT PAGE 3, ALAMEDA COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WESTERLY CORNER OF SAID BLOCK 6; THENCE NORTH 27°24'37" EAST 199.99 FEET TO THE NORTHERN CORNER OF SAID BLOCK 6, THENCE ALONG THE NORTHEASTERN LINE OF SAID BLOCK 6, SOUTH 62°35'23" EAST, 198.35 FEET TO POINT ON THE NORTHEASTERLY LINE OF SAID LOT 13, FROM WHICH POINT THE NORTHEASTERLY CORNER OF SAID LOT 13 BEARS SOUTH 62°35'23" EAST 1.66 FEET; THENCE PARALLEL WITH THE NORTHWESTERLY LINE OF SAID BLOCK 6, SOUTH 27°24'37" WEST 109.09 FEET; THENCE, PERPENDICULAR TO THE LAST COURSE, SOUTH 62°35'23" EAST 1.66 FEET TO THE SOUTHEASTERLY LINE OF SAID LOT 24; THENCE, ALONG SAID SOUTHEASTERLY LINE OF LOT 24, SOUTH 27°24'33" WEST 20.90 FEET TO THE SOUTHWESTERLY LINE OF SAID BLOCK 6; THENCE, ALONG SAID SOUTHWESTERLY LINE, NORTH 62°35'23" WEST 200.01 FEET TO THE POINT OF BEGINNING.

CONTAINING 39,825 SQUARE FEET, MORE OR LESS, WHEN MEASURED AT GROUND LEVEL (SEE BASIS OF BEARINGS STATEMENT).

THIS DESCRIPTION WAS COMPILED FROM PARCEL MAP 5651 (UNRECORDED AS OF THIS DATE) WHICH IS ON FILE IN THE OFFICE OF PORT LAND SURVEYOR, PORT OF OAKLAND. PARCEL MAP 5651 IS BASED UPON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3. ALL DISTANCES SHOWN ARE GRID DISTANCES. TO OBTAIN GROUND DISTANCES, MULTIPLY GRID DISTANCES BY 1.0000705.

THIS DESCRIPTION WAS COMPILED FROM FIELD AND FROM RECORD DATA PURSUANT TO SECTION 8726 OF THE CALIFORNIA BUSINESS AND PROFESSIONS CODE UNDER THE SUPERVISION OF:

Forrest A. Reed
FORREST A. REED, P.L.S. 6207

